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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,726	01/23/2004	Michael Majchrzak	032016-0128	7340
26371	7590	12/12/2005		
FOLEY & LARDNER LLP 777 EAST WISCONSIN AVENUE SUITE 3800 MILWAUKEE, WI 53202-5308			EXAMINER PELHAM, JOSEPH MOORE	
			ART UNIT 3742	PAPER NUMBER

DATE MAILED: 12/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/763,726

Applicant(s)

MAJCHRAK ET AL.

Examiner

Joseph M. Pelham

Art Unit

3742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19-29 and 42-56 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-29, 42-45, 49-52 and 56 is/are rejected.
- 7) ☒ Claim(s) 46-48 and 53-55 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>11/14/05</u> | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3742

Claim Rejections - 35 USC § 103

Claims 19-29, 42-45, 49-52, and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. 6742344 (US'344) in view of JP-2000-175781 (JP'781).

Referring to Fig. 1, US'344 discloses a food container with opening 1, fan driven air circulation 16, 17, duct system 4-10 comprising one air return 3 adjacent the opening 1 and a plurality of planar, perforated air returns 13 opposite the opening.

The claims differ substantively from US'344 only in reciting a heated container and humidity control. However, the Examiner notes that the principle advantage cited for the US'344 container, the energy efficient use of air changed to a temperature different from ambient temperature, circulating in a food containing chamber, applies as well to heated as to cooled air. That is, for precisely the same reason that the air return structure of US'344 "allows cooled air from the cooling element to be used in a far more efficient manner" (col. 2, lines 46-48), the structure would *allow heated air from a heating element to be used in a far more efficient manner*, because the energy transfer between the food being treated and the air stream is more efficient regardless of whether it is being heated or cooled.

JP'781 discloses a heated container (heaters 14, 23) and temperature and humidity control (15, 17) (see the translation of the "Detailed Description" supplied by the Examiner, page 4/4, paragraphs 39 & 40). It would have been obvious to adapt the system of US'344 to a heated chamber with humidity control, after the manner of JP'781, where heated foods are displayed, since the advantages of the air duct system of US'344 obtain as well for heating as cooling, and humidity control prevents the drying of displayed foods.

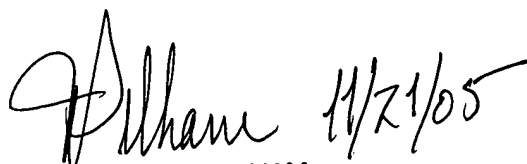
Allowable Subject Matter

Claims 46-48 and 53-55 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph M. Pelham whose telephone number is 571-272-4786. The examiner can normally be reached on M-F 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robin Evans can be reached on 571-272-4777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


JOSEPH PELHAM
PRIMARY EXAMINER